

HOW TO FILE A FREEDOM OF INFORMATION REQUEST IN WEST VIRGINIA

Statute: Freedom of Information Act, W. Va. Code § 29B-1-1 et seq.

Preliminary Questions:

1. Are you seeking information from a "public body" as defined by the Act? This includes any body which is created by or primarily funded by state or local authority.
2. Is the information a "public record" under the Act? It must be "prepared, owned and retained by a public body."
3. Who is the "custodian" of the record? In other words, whose record is it, and who is the elected or appointed administrator of that public body?
4. Do you want to inspect or copy the record? There may be a charge for copies, while inspections may take place at their office during business hours.

Statutory guidelines: W. Va. Code § 29B-1-3 is basic authority.

1. A request to inspect or copy a public record must be made directly to the custodian of the record.
2. The request must state "with reasonable specificity" the information sought.
3. There is no statutory requirement that the request be in writing; however a writing is helpful to prove that the request was made.

Procedural tips:

1. Be sure you are asking the right person or department for the record. If possible, make a telephone call to find out who has the information you are seeking, and address your request to them.
2. The request should be in writing, either hand delivered with a copy for the custodian to sign indicating date of receipt; sent by certified mail, return receipt requested; or by facsimile showing proof of receipt.
3. Be as specific as possible. For example, don't ask to see the records of all payments made by a public body, if you are only interested in payments to a specific individual or company.

4. State in the request whether you want to inspect or copy the record(s). If you are not sure, ask for a time and place where you can review them, and request copies of any that you want to keep then. If you want copies, ask how much they will cost.
5. Remind the custodian that they have five (5) business days to respond to your request.
6. Provide a telephone number where you may be reached during business hours, in case they have questions or need additional information from you.

Common Problems:

1. No such record exists. A public body is under no obligation to create a document that contains the information you seek. However, they may be able to produce one if you are willing to pay for it (including programming and personnel costs).
2. Request was made of the wrong person or public body. The person responding to your request does not have to tell you where you can obtain the information you seek, even if he or she knows. You should ask for this information, if you are not sure you are requesting the records from the right person or public body.
3. No response. If you do not receive an answer within three working days after the statutory time period has run, follow up on your request, in writing. Remind them of the civil and criminal enforcement provisions of the statute should they fail to provide you with a timely answer.
4. Request is refused under a claimed statutory exemption from disclosure. If you do not agree that the exemption applies, ask for the name, address and telephone number of their attorney and contact him or her. If that fails, seek legal counsel to enforce the Freedom of Information Act in the circuit court of the county where the record is kept.

Other matters:

- If the records exist in magnetic, electronic or computer form, copies must be made available on magnetic or electronic media, if so requested.
- A person who successfully sues a public body for access to public records may recover attorney fees and court costs from the public body that denied him or her access to the records.

SAMPLE FREEDOM OF INFORMATION REQUEST LETTER

1000 Main Street
Charleston, WV 25301
October 1, 2007

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

The Honorable Danny Jones
Mayor, City of Charleston
Charleston City Hall
Court and Virginia Streets
Charleston, WV 25301

RE: Freedom of Information Act Request

Dear Mayor Jones:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-3, I hereby request copies of the following public records:

The minutes of the August 20, 2007, meeting of the Charleston City Council, the agenda for that meeting along with any written materials discussed, all committee reports submitted at the meeting, and any ordinances or resolutions adopted by Council at that meeting.

I am willing to pay a reasonable fee for the cost of reproducing these records. However, if this fee will be more than ten dollars (\$10.00), I would like the opportunity to review the documents in person before deciding if I want copies of them.

Please respond to this request within five (5) business days by either mailing me the copies with a bill for the charges, or advising me of the time and place at which I may inspect and copy these records, and what the cost will be for any copies. If you prefer, I can pick them up at your office and pay for them then.

If you have any questions or need additional information from me, I may be reached by telephone at 555-1234 between 9:00 a.m. and 5:00 p.m., Monday through Friday, or at home at 555-4321. Thank you for your prompt attention to my request.

Sincerely,